

BAKER & HOSTETLER LLP

45 Rockefeller Plaza
New York, New York 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201

*Attorneys for Irving H. Picard, Trustee for the
Substantively Consolidated SIPA liquidation of
Bernard L. Madoff Investment Securities LLC
and the Chapter 7 Estate of Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (CGM)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Substantively
Consolidated SIPA Liquidation of Bernard L.
Madoff Investment Securities LLC and the Chapter
7 Estate of Bernard L. Madoff,

Plaintiff,

v.

MALCOLM SAGE and LYNNE FLORIO,

Defendants.

Adv. Pro. No. 23-01099 (CGM)

**TRUSTEE'S RESPONSE TO MOTION OF DEFENDANTS TO EXTEND
TIME TO ANSWER OR OTHERWISE RESPOND TO COMPLAINT**

Irving H. Picard, as trustee (the "Trustee") for the liquidation of Bernard L. Madoff
Investment Securities LLC ("BLMIS") under the Securities Investor Protection Act, 15 U.S.C.

§§ 78aaa–78lll, substantively consolidated with the chapter 7 estate of Bernard L. Madoff, hereby responds to the Motion of Defendants to Extend Time to Answer or Otherwise Respond to the Complaint (the “Motion”) (ECF No. 5). The Trustee does not object to the Motion but wishes to make the Court aware of certain background facts so that the Court can appreciate why the Trustee did not simply assent to the extension initially requested by Defendants Malcolm Sage (“Mr. Sage”) and his wife, Lynne Florio (“Ms. Florio” and together with Mr. Sage, “Defendants”).

The Trustee commenced the instant adversary proceeding to recover subsequent transfers received by Defendants. The initial transfers at issue were received by two partnerships, Sage Associates and Sage Realty, each of which held an investment advisory account at BLMIS for decades. The avoidability of these initial transfers, which totaled \$16.88 million, was the core issue at the bench trial before the Honorable John F. Keenan of the United States District Court for the Southern District of New York. Mr. Sage was the lone witness to testify at trial on behalf of Sage Associates and Sage Realty¹ and although Judge Keenan “largely” credited Mr. Sage’s testimony, he nevertheless concluded that the Trustee was entitled to judgment, entered on April 20, 2022, avoiding all of the initial transfers at issue. Based on his finding that Mr. Sage was a general partner of both Sage Associates and Sage Realty, Judge Keenan also entered judgment against Mr. Sage and his two siblings, jointly and severally, for the total amount of the avoided transfers.

Following the District Court’s entry of judgment, Mr. Sage hired new counsel, Jim Walden of Walden Macht & Haran LLP, to appeal Judge Keenan’s decision. Although Mr. Sage, through

¹ Sage Associates and Sage Realty were represented at trial by Andrew Kratenstein of McDermott Will & Emery LLP, who was the third attorney to represent the partnerships as well as Mr. Sage and his two siblings in the avoidance proceedings. The defendants initially were represented by Carole Neville, a partner at the time of SNR Denton LLP. In 2013, Helen Chaitman then-of Becker & Poliakoff substituted as counsel of record. In 2016, Mr. Kratenstein was substituted as counsel of record for all defendants.

counsel, filed a notice of appeal, he did not (and since has not) posted any type of bond in his appeal. Indeed, Mr. Walden advised counsel for the Trustee that his client's main goal was not to appeal Judge Keenan's decision but rather to reach a settlement with the Trustee. But a few weeks later, Walden Macht & Haran LLP relayed that it was only representing Mr. Sage in his appeal² and that he had engaged separate counsel in connection with the parties' settlement discussions. However, the law firm that Mr. Sage had engaged—Tarter Krinsky & Drogin LLP—had a conflict of interest because the Trustee had retained one of its former partners as a consultant in the BLMIS liquidation proceeding. Since that time, the Trustee has not been contacted by Mr. Sage, either directly or through counsel, regarding settlement.

Defendants have now hired Olshan Frome Wolosky LLP, yet another law firm—Mr. Sage's fifth—to represent him in connection with the proceedings currently before this Court. In conjunction with the instant application, Olshan Frome has filed a motion to withdraw the reference of this matter, defiant of case law and prior findings of this Court as to similarly-situated defendants (ECF No. 10). Particularly because of these types of tactical delays and that nothing has been paid to date toward the judgment secured by the Trustee against, among others, Mr. Sage, the Trustee was not inclined to grant the request from Mr. Sage's latest counsel for an extension of more than a month to answer or otherwise respond to the Trustee's subsequent transferee complaint. In the absence of a bond or other security, Mr. Sage has no reason to delay paying the

² Mr. Sage's appeal was argued before the Second Circuit Court of Appeals on Wednesday, May 31, 2023.

judgment and returning those stolen funds to the Trustee for equitable distribution to Madoff's victims who have still not recovered the monies that they invested with BLMIS.

Date: June 2, 2023
New York, New York

Of Counsel:

By: /s/ Nicholas J. Cremona

BAKER & HOSTETLER LLP
127 Public Square
Cleveland, Ohio 44114
Telephone: (216) 621-0200
Facsimile: (216) 696-0740
James H. Rollinson
Email: jrollinson@bakerlaw.com

BAKER & HOSTETLER LLP
45 Rockefeller Plaza
New York, New York 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201
David J. Sheehan
Email: dsheehan@bakerlaw.com
Nicholas J. Cremona
Email: ncremona@bakerlaw.com
Lan Hoang
Email: lhoang@bakerlaw.com

*Attorneys for Irving H. Picard, Trustee for the
Substantively Consolidated SIPA Liquidation
of BLMIS and the Chapter 7 Estate of
Bernard L. Madoff*